

August 7, 2014

Sandra Lyon, Superintendent of Schools
Santa Monica-Malibu Unified School District
1651 16th St.
Santa Monica, CA 90404

By postal mail and email to slyon@smmusd.org

Dear Superintendent Lyon,

We are writing to you on behalf of the group “Concerned Malibu/Cabrillo Teachers,” which consists of many of the teachers and staff at Malibu Middle and High School and Juan Cabrillo Elementary School. We need to raise a matter of serious concern to the teachers and staff. It has come to our attention that at a recent meeting with some of the teachers at Malibu High School and Middle School, the new interim principal, David Jackson, threatened to fire teachers who would not go back to previously vacated classroom that were found to have illegal levels of PCBs in caulk or PCBs above EPA health guidelines in air or dust. Some of these teachers were diagnosed with cancer while teaching in those rooms and are aware that the District has proposed to leave the illegal caulk in place for 15 years or more. Mr. Jackson also attempted to convey misinformation, such as claiming that the caulk has been encapsulated. The teachers know this is not true, and will not accept false assurances or intimidation.

Firing teachers for refusing to return to classrooms with caulk containing PCBs in violation of the Toxic Substances Control Act (i.e. at or above 50 ppm PCBs) or in air or dust samples in excess of EPA health guidelines is a violation of California law which we will not hesitate to take action to enforce.

California Labor Code 6311: No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because he or she refused to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or his or her fellow employees shall have

a right of action for wages for the time the employee is without work as a result of the layoff or discharge.

Section 6312: Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of Section 6310 or 6311 may file a complaint with the Labor Commissioner pursuant to Section 98.7.

Section 6400 provides:

- (a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.

Section 6402 further provides:

No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

The Labor Code provides relief for violations of these sections including rehiring or reinstatement, reimbursement of lost wages with interest, attorney's fees, and the posting of notice to employees (Section 98.7(c)). In addition to complaints with the Labor Commissioner, any fired teachers could bring court actions for wrongful discharge.

It should also be noted that the Labor Code gives teachers and other employees or their representatives the right to observe and monitor any testing and to notice of exposures to toxic substances. We expect compliance with these requirements.

Labor Code Section 6408 specifies:

All employers shall provide information to employees in the following ways, as prescribed by authorized regulations:

...

- (c) The opportunity for employees or their representatives to observe monitoring or measuring of employee exposure to hazards conducted pursuant to standards promulgated under Section 142.3.
- (d) Allow access by employees or their representatives to accurate records of employee exposures to potentially toxic materials or harmful physical agents.
- (e) Notification of any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels exceeding those prescribed by an applicable standard, order, or special order, and informing any employee so exposed of corrective action being taken.

We have heard other disturbing reports about this new principal, which appear to evidence that he was hired to intimidate teachers and parents who question the safety of the schools or the District's response to the contamination issues. We have been told that Mr. Jackson has threatened to have parents and students who attend gatherings to publicize and discuss the contamination issues arrested if they step onto the property of their own schools. We have also heard of threats to expel students who refuse to return to contaminated classrooms or who attempt to take caulk samples.

These bullying tactics are the last thing needed to demonstrate the District's promised good faith and transparency or to rebuild trust with the community. We ask that you advise Mr. Jackson of the legal requirements set out above and of your expectation that he will comply with them, and direct him to retract the threats he has made. We also ask that you take action to assure that teachers and staff have a safe and healthful place to work by:

1. Providing a PCB-free alternative for students and teachers, including portable classrooms, while:
2. Testing caulk in all pre-1980 classrooms;
3. Removing all PCB's that violate the federal Toxic Substances Control Act (50 pm); and
4. Reallocating Bond BB and ES funds to remediate or build classrooms free of toxic chemicals like PCBs, lead, and asbestos, in keeping with the stated purpose of the bond measures.

Please let us know what you plan to do in response to our requests so that we can determine what the appropriate recourse we should pursue.

Sincerely,

Jeff Ruch, Executive Director

Paula Dinerstein, Senior Counsel
Public Employees for Environmental Responsibility

cc: Members of the SMMUSD Board of Education:

Ben Allen
Oscar de la Torre
Jose Escarce
Maria Leon-Vasquez
Laurie Lieberman
Ralph Mechur

Nimish Patel

US EPA Region IX:

Steven S. Armann

Patrick Wilson

Tom Huetterman

Jeff Scott

Jared Blumenfeld, EPA Region IX Administrator

US EPA Headquarters:

Mathy Stanislaus, Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER), U.S. EPA

Barry Breen, Deputy Assistant Administrator –OSWER

Tom Cota, California Department of Toxic Substances Control

Senator Barbara Boxer

Senator Dianne Feinstein

Congressman Henry Waxman

State Senator Fran Pavley

State Assemblyman Richard Bloom

Senator Ted Lieu

Zev Yaroslavsky, LA County Supervisor (3rd District)

Kamala D. Harris, California Attorney General

Tom Torlakson, California Department of Education

Malibu City Council:

Skylar Peak

John Sibert

Joan House

Lou La Monte

Laura Rosenthal

Environ:

Doug Daugherty

Eric Wood

Carol Serlin